

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DAVID C. KAMP

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Appeal No. 2001-0078  
Application No. 08/892,131

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ON BRIEF

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Before RUGGIERO, LALL, and BLANKENSHIP, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the Examiner's rejection of claims 1-6, 13, 15, and 16. Claims 7-12 and 14 have been canceled.

The disclosed invention relates to a liquid containment and dispensing device having a self-contained pump. The device has the capability of dispensing the liquid in small doses, such as the dispensing of printing ink for use in an ink jet printer. More particularly, the device has a protective shell which houses a flexible pouch which contains the ink or other liquid to be

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dispensed. Further, the flexible pouch is surrounded by an annular or perimetrical frame which depends from a chassis and serves to protect the pouch from impact and shock loads.

Claim 1 is illustrative of the invention and reads as follows:

1. In a liquid containment and dispensing device having a rigid, generally cup-shaped outer shell with an open end and an opposed pair of sidewalls, each of the opposed pair of sidewalls having a longitudinally extending recess therein, a chassis secured to the open end of the shell, the chassis having a pumping mechanism with a liquid outlet therefrom the chassis further having a planar portion extending transversely of the open end of the shell, a flexible pouch having an open end and a closed end, the closed end being positioned within the shell, the chassis further having an annular frame, extending transversely from the planar portion, the frame surrounding the flexible pouch and having an opposed pair of side members with a rib portion extending outwardly from each of said side members, characterized in that each of said opposed pair of side members is adjacent one of the sidewalls of the outer shell, the rib portion of each of said opposed pair of side members extending into one of the recesses in the sidewall of the shell.

The Examiner relies on the following prior art:

Barinaga	5,721,576	Feb. 24, 1998 (filed Dec. 04, 1995)
Clark et al. (Clark)	5,734,401	Mar. 31, 1998 (filed Dec. 04, 1995)

Claims 1-6, 13, 15, and 16 stand rejected under 35 U.S.C.  
§ 103(a) as being unpatentable over Clark in view of Barinaga.

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Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the Briefs<sup>1</sup> and Answer for their respective details.

#### OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the Examiner, the arguments in support of the rejection and the evidence of obviousness relied upon by the Examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellant's arguments set forth in the Briefs along with the Examiner's rationale in support of the rejection and arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 1-3, 6, 13 and 15. We reach the opposite conclusion with respect to claims 4, 5, and 16. Accordingly, we affirm-in-part.

Appellant's arguments in response to the Examiner's obviousness rejection of the appealed claims are organized

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<sup>1</sup> The Appeal Brief was filed March 13, 2000 (Paper No. 12). In response to the Examiner's Answer dated May 17, 2000 (Paper No. 13), a Reply Brief was filed June 22, 2000 (Paper No. 14), which was acknowledged and entered by the Examiner as indicated in the communication dated July 3, 2000 (Paper No. 15).

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according to a suggested grouping of claims indicated at page 4 of the Brief. We will consider the appealed claims separately only to the extent separate arguments for patentability are presented. Any dependent claim not separately argued will stand or fall with its base claim. Note In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983).

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073-74, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.,

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776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

With respect to independent claims 1 and 13, Appellant's arguments in response to the obviousness rejection assert a failure of the Examiner to establish a prima facie case of obviousness since all of the claim limitations are not taught or suggested by the applied Clark or Barinaga references. In particular, Appellant asserts (Brief, page 7; Reply brief, page 2) that Barinaga does not make up for the deficiency of Clark in disclosing an ink pouch frame with outwardly extending rib portions which extend into recesses in an outer shell as claimed.

After careful review of the applied Barinaga reference, relied on by the Examiner as providing a teaching of the claimed rib and shell recess feature, we are in agreement with Appellant's position as stated in the Briefs. Our interpretation of Barinaga coincides with that of Appellant, i.e., to whatever extent Barinaga's frame 46 could be interpreted as containing a

rib portion, any such rib portion does not extend into recesses in an outer shell as set forth in appealed claim 1. In our view, in contrast to Appellant's claimed shell recess, Barinaga's Figure 2 illustration supports the conclusion that, at best, the lower skirt portion of frame 46 engages the inner surface of shell 30 in an interference fit.

Although the Examiner, in addressing Appellant's shell recess argument (Answer, page 8), asserts the "notoriously well known" aspects of such a structure, we find no evidence of record to support such a conclusion. "[T]he Board cannot simply reach conclusions based on its own understanding or experience - or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings." In re Zurko, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). See also In re Lee, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), in which the court required evidence for the determination of unpatentability by clarifying that the principles of "common knowledge" and "common sense" may only be applied to analysis of evidence, rather than be a substitute for

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evidence. The court has also recently expanded their reasoning on this topic in In re Thrift, 298 F.3d 1357, 1364, 63 USPQ2d 2002, 2006-07 (Fed. Cir. 2002).

Accordingly, since the Examiner has not established a prima facie case of obviousness, the rejection of independent claim 1 and its dependent claims 2 and 3, as well as independent claim 13, is not sustained.

We also do not sustain the Examiner's obviousness rejection of dependent claims 6 and 15 directed to the feature of heat sealing the cap to the shell. The Examiner suggests (Answer, pages 9 and 10) that the selection of a particular method for attaching a cap to a shell would be considered "a common practice" for a designer depending on a particular application, and further that heat sealing provides "a quick assembly of the cartridge so that manufacturing cost would be reduced . . . ." As with our misgivings expressed above with regard to the Examiner's rejection of claims 1-3 and 13, we find no evidentiary support on the record that would support these conclusions of the Examiner.

Turning to a consideration of the Examiner's obviousness rejection of claims 4 and 5, we note that while we found Appellant's arguments to be persuasive with respect to the

rejection of claims 1-3, 6, 13, and 15 discussed supra, we reach the opposite conclusion with respect to claims 4 and 5. Unlike previously independent claims 1 and 13 which set forth the structural relationship between the ribbed frame and the recessed shell, independent claim 4 is directed to the structural engagement of the chassis overlying cap and the wall of the pumping mechanism. Although Appellant contends (Brief, page 4) that Clark and Barinaga lack the specific features of claim 4, we find this argument to be unfounded. We find to be equally without merit Appellant's arguments with respect to dependent claim 5 which repeat the assertions made with regard to claim 4 by asserting a lack of teaching of " . . . the engagement of ribs (219) of the embodiment of Fig. 11 with the recesses (222d) . . . . " In contrast to Appellant's arguments, Barinaga, as pointed out by the Examiner (Answer, page 9), discloses a pumping mechanism 2 having ribs 120 which engage the slot 128 in the skirt of the cap 32. In our view, the Examiner's proposed combination of Clark and Barinaga establishes a prima facie case of obviousness which has not been rebutted by any convincing arguments from Appellant. Therefore, the Examiner's obviousness rejection of claims 4 and 5 based on the combination of Clark and Barinaga is sustained.



Lastly, we also sustain the Examiner's obviousness rejection of independent claim 16 based on the combined teachings of Clark and Barinaga. At page 8 of the Answer, the Examiner, responding to Appellant's comments in the Brief, sets forth an explanation in support of the rejection of claim 16 which essentially repeats the rationale provided in the rejection against previously discussed claim 4. Although Appellant filed a Reply Brief, no arguments pointing out any error in the Examiner's rejection of claim 16 has been set forth. Further, our review of the Barinaga reference reveals a cap and shell structure which satisfies the requirements of claim 16. (See Barinaga, outwardly projecting bead 124 of cap 32 and inwardly projecting recess 122 on interior surface of shell 30).

In summary, with respect to the Examiner's 35 U.S.C. § 103(a) rejection of the appealed claims, we have sustained the rejection of claims 4, 5, and 16, but have not sustained the rejection of claims 1-3, 6, 13, and 15. Therefore, the Examiner's decision rejecting claims 1-6, 13, 15, and 16 is affirmed-in-part.<sup>2</sup>

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<sup>2</sup> The Examiner and Appellant should review the following instances of unclear antecedent reference:

Claim 4, lines 17-18, "the pumping chamber"

Claim 13, line 11, "chassis" should apparently be "shell"

Claim 15, line 1, "said cap" which raises a question as to whether claim 15 is properly dependent on claim 13.

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No time period for taking any subsequent action in  
connection with this appeal may be extended under 37 CFR  
§ 1.136(a).

AFFIRMED-IN-PART

JOSEPH F. RUGGIERO  
Administrative Patent Judge

PARSHOTAM S. LALL  
Administrative Patent Judge

HOWARD B. BLANKENSHIP  
Administrative Patent Judge

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